

MARY A. BARNETT

IBLA 80-855

Decided March 26, 1981

Appeal from decision of Eastern States Office, Bureau of Land Management, denying reinstatement of oil and gas lease ES-17642.

Reversed and remanded.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When the lessee makes a sufficient showing that rental payment for an oil and gas lease was mailed 15 days before the date it is due, the lease will be reinstated because the late filing was not due to a lack of reasonable diligence.

APPEARANCES: David H. Massey, Esq., of Laurel, Mississippi, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Mary A. Barnett has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), holding that oil and gas lease ES 17642 was terminated for failure to pay rental on or before the anniversary date of the lease, November 1, 1979. BLM further noted that although Mr. Barnett alleged he mailed the rental payment in a timely manner, he did not furnish sufficient evidence to support his claim. Therefore, BLM found appellant was not entitled to reinstatement of the lease in the absence of a showing of reasonable diligence. The rental was received by BLM November 13, 1979. Appellant petitioned for the reinstatement of her lease under the provisions of 30 U.S.C. § 188(c) (1976), which allow for such reinstatement where payment of the rental is made within 20 days after the anniversary date and it is shown that the failure to pay on or before the anniversary was either justifiable or not due to a lack of reasonable diligence.

In her statement of reasons appellant alleges that the rental on the lease was timely forwarded to the Eastern States Office on October 17, 1979. She states, inter alia:

I received your receipt from the address of 350 South Picket Street [Alexandria, Virginia] and not Silver Springs, [Maryland] so I assumed you had moved at that time. This receipt indicated that my check was not processed by your office until November 13, 1979. On date of January 3, 1980 I wrote your office inquiring about this (copy enclosed) and you never answered this letter.

Appellant has provided three statements (letters to BLM dated January 3, May 5, and July 31, 1980) by her husband, Cecil E. Barnett, now deceased, that he personally mailed the rental on October 17, 1979. She has provided additional corroboration of her early mailing in the form of photocopies of a sequence of three canceled checks signed by her husband, check Nos. 872 through 874, showing the date on the face of each check and when it was cleared by her bank. Thus, respectively, check No. 872, payable to First National Bank, dated October 16, 1979, shows a clearance date on the back as "10-17-79." Check No. 873, payable to Bureau of Land Management, dated October 17, 1979, shows a deposit date on the back as "11-8-79." Check No. 874, payable to Floyd's Garage, dated October 19, 1979, shows a clearance date on the back as "10-22-79." All three checks were written and processed prior to BLM's acknowledgement of receipt of the rental check on November 13, 1979.

There is a further question of conflicting dates unresolved in the record as to when the rental check was negotiated and when BLM

alleges this check was received. The date of deposit of check No. 873 by BLM with the Treasury of the United States on November 8, 1979, precedes BLM's stated receipt of the rental by 5 days and is further indication of the likelihood of an earlier filing. There is no way to verify BLM's date of receipt of the rental check from the record because BLM failed to retain the envelope so that the original postmark might be examined. The file does not show whether BLM made a notation of what the postmark indicated. Thus, there is no evidence to refute appellant's evidence that the payment was mailed on October 17.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay rental timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1976).

[2] Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). Corroborative evidence of some kind is properly required to establish that the date of mailing was sufficiently in advance of the due date to constitute reasonable diligence. Mercedes M. Peratt, 36 IBLA 331 (1978); Emma Sabsevit, 35 IBLA 177 (1978). From our review of the record, we find that appellant has submitted sufficient evidence to demonstrate that the late payment was not due to a lack of reasonable diligence on her part. For this reason and because the payment was received by BLM within 20 days of the anniversary date of the lease, appellant is entitled to reinstatement of lease ES 17642.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to the State Office for appropriate action.

Anne Poindexter Lewis
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING IN THE RESULT:

While I concur in the effective result reached by the majority in the instant case, I do so on a different basis. Assuming, arguendo, that the rental payment was not timely received, I do not think appellant has shown adequate grounds for reinstatement.

An examination of appellant's contentions leads inescapably to the conclusion that at least part of the problem in this case was generated through the fault of appellants. When Cecil Barnett stated in his letter of July 31, 1980, that "I received your receipt from the address of 350 South Pickett Street and not Silver Spring, so I assumed you had moved at that time" (emphasis added), he is confessing, in effect, that until he was notified of the receipt of the payment he was not aware that the Eastern States Office had moved from Maryland to Virginia. This being the case, it seems obvious that Barnett would have addressed the envelope containing the check to BLM at its former address in Silver Spring, Maryland.

The Eastern States Office, BLM, moved from Silver Spring, Maryland to Alexandria, Virginia, effective July 13, 1979. Notice of this move was duly published in the Federal Register. 44 FR 37993 (June 29, 1979). On September 28, 1979, 43 CFR 1821.2-1(d) was amended to reflect this change. See 44 FR 55875 (Sept. 28, 1979). Thus, as this Board has had occasion to note in numerous other contexts, appellants were properly charged with constructive knowledge of this change.

To the extent that the delay in receipt of the subject rental payment was caused by appellant's inadvertent error in addressing the envelope, the delay cannot be credited to a delay in the delivery of the mail, since such a delay presupposes proper addressing of the envelope. Additionally, insofar as the delay in receipt may have been caused by Postal Service mishandling in timely forwarding the payment to the proper address such additional delay is equally attributable to appellant's original error. This is not the type of delay which transpired in Richard L. Rosenthal, 45 IBLA 146 (1980), where the Colorado State Office, BLM, took over 2 weeks to forward payment to the Montana State Office, BLM. The animating rationale of that decision was that the Department had an affirmative obligation to act in a timely manner and that, where an initial delay was compounded by actions of the Department, an oil and gas lessee was not chargeable with the additional delay generated by the Department. This principle, however, obviously only applies where the payment is timely received in the Department. I do not believe from the present record that appellants have shown reasonable diligence as set forth in numerous decisions of this Board.

On the other hand, the majority points out critical inconsistencies in the State Office records. It seems obvious that the State

Office records which indicate that payment was received on November 13, 1979, are clearly erroneous since the check was, in fact, deposited on November 8, 1979, five days earlier. Equally unexplained is the failure of the Eastern States Office to retain the envelope, despite the express admonition of this Board that such retention was critical to the fair adjudication of petitions for reinstatement. See R. G. Price, 8 IBLA 290, 292-93 (1972).

In view of the state of the instant case record, I would hold that the payment was timely received and thus the lease would not have terminated. Cf. L. E. Garrison, 52 IBLA 131 (1981). Since the result of this holding is not dissimilar to the reinstatement of the lease contemplated in the majority decision, I concur in the result of that decision.

James L. Burski
Administrative Judge

